

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

U.S. Treasury Decisions

T.D. 00-81 and 00-82

U.S. Customs Service

General Notice

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114,
123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, and 191

(T.D. 00-81)

TECHNICAL AMENDMENTS TO THE CUSTOMS REGULATIONS

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections to various authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States made by the President's Proclamation of October 2, 2000, to implement the United States-Caribbean Basin Trade Partnership Act.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings, (202) 927-1415.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In Chapter I of the Customs Regulations (19 CFR chapter I) there are many general and specific authority citations and some sections that reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS). *See*, T.D. 95-29. Due to recent amendments to the HTSUS, many of the General Notes provisions have been renumbered. Thus, those general and specific authority citations and sections in the Customs Regulations that reference certain General Note provisions are no longer accurate.

On May 18, 2000, the United States-Caribbean Basin Trade Partnership Act was enacted. To implement certain provisions of this Act, on October 2, 2000, the President issued Proclamation 7351 (65 FR 59329), the Annex of which modified the HTSUS by, among other things, redesignating certain of the General Notes of the HTSUS.

Specifically, HTSUS General Notes 16-21 were redesignated as HTSUS General Notes 18-23, respectively. Some of the former General Notes are referenced in the general or specific authority citations for 24 parts and in 3 sections of the Customs Regulations (19 CFR parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 145, 146, 148, 151, 152, 177, 181, and 191, and §§ 24.23, 141.4, and 152.13).

This document corrects those HTSUS General Note references in the Customs Regulations.

INAPPLICABILITY OF PUBLIC NOTICE AND COMMENT REQUIREMENT AND DELAYED EFFECTIVE DATE REQUIREMENT

Because these amendments merely correct certain authority citation referencing errors in the Customs Regulations, pursuant to 5 U.S.C. 553(b)(B), Customs finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), Customs finds that good cause exists for dispensing with the requirement for a delayed effective date.

THE REGULATORY FLEXIBILITY ACT

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

EXECUTIVE ORDER 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

AMENDMENTS TO THE REGULATIONS

Chapter I of the Customs Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. In § 24.23:

a. The parenthetical reference in paragraph (c)(1)(iii) to "General Note 3(c)(v), HTSUS" is removed and added, in its place, is the refer-

ence "General Note 7, HTSUS";

b. The parenthetical reference in paragraph (c)(1)(iv) to "General Note 20(c)(ii)(B), HTSUS" is removed and added, in its place, is the reference "General Note 4(b)(i), HTSUS"; and

c. The reference in paragraph (c)(1)(v) to "General Note 16, HTSUS" is removed and added, in its place, is the reference "General Note 18, HTSUS".

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22; Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * *

PART 102 - RULES OF ORIGIN

1. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

1. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * *

PART 114—CARNETS

1. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

1. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * *

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 18; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4, Harmonized Tariff Schedule of the United States), 1498;

* * * *

2. In § 141.4:

a. The reference in paragraph (b)(1) to "General Note 16" is removed and added, in its place, is the reference "General Note 18"; and

b. The reference in the introductory text of paragraph (c) to "General Note 16(e)" is removed and added, in its place, is the reference "General Note 18(e)".

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 22, Harmonized Tariff Schedule of the United States);

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

PART 152 - CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority citation for part 152 continues, and the specific authority for §152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 19, Harmonized Tariff Schedule of the United States (HTSUS)).

2. In § 152.13:

a. The reference in both paragraphs (b)(1) and (b)(2) to "General Note 17" is removed and added, in its place, is the reference "General Note 19";

b. The reference in the introductory text of paragraph (c) and in paragraphs (c)(1), (c)(2), and (c)(3) to "General Note 17" is removed and added, in its place, is the reference "General Note 19"; and

c. The references in paragraph (d) to "General Note 17" are removed and added, in their place, are the references "General Note 19".

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Har-

monized Tariff Schedule of the United States), 1624.

* * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314.

PART 191—DRAWBACK

1. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * *

Dated: November 8, 2000.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

(T.D. 00-82)

SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback rulings approved May 13, 1996 to September 27, 1996, inclusive, pursuant to Subpart M, Part 191, of the Customs Regulations.

In the synopses below are listed for each ruling approved under 19 U.S.C. 1313(g), the name for the company, the specified vessels on which drawback is authorized, the merchandise which will be used to manufacture or produce these vessels, the date the proposals were signed, the port to which the rulings were forwarded, and the date on which they were approved.

Dated: November 14, 2000.

JOHN DURANT,
*Director,
Commercial Rulings Division.*

(A) Company: **Christensen Shipyards, Ltd.**

Vessel: Ocean going World Class Fiberglass Yachts ranging in size from 95' to 155'

Merchandise: AIREX AG foam core R63.80 (5pcf)

Application signed: May 18, 1995

Ruling forwarded to PD of Customs: San Francisco, May 13, 1996

Ruling: 46-00015-000

(B) Company: **Christensen Shipyards, Ltd.**

Vessel: Ocean going World Class Fiberglass Yachts ranging in size from 95' to 155'

Merchandise: Main Engines; Gear Boxes; Anchor Windlasses; Stern Capstans; Roll Stabilizers

Application signed July 18, 1996

Ruling forwarded to PD of Customs: San Francisco, September 27, 1996

Ruling: 46-00016-000

Drawback decisions, synopses of:

Manufacturers:

	T.D.	Page
Christensen Shipyards, Ltd	00-82A	00
Christensen Shipyards, Ltd	00-82-B	00

Drawback decision, synopses of:

Merchandise:

	T.D.	Page
AIREX AG foam core R63.80 (5pcf)	00-82-A	00
anchor windlasses	00-82-B	00
gear boxes	00-82-B	00
main engines	00-82-B	00
roll stabilizers	00-82-B	00
stern capstans	00-82-B	00

U.S. Customs Service

November 15, 2000

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

U.S. Customs Service

General Notice

19 CFR PART 177

PROPOSED MODIFICATION OF CUSTOMS RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF STUFFED SHEEPSKIN CUSHIONS AND PILLOWS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of classification ruling letters and revocation of treatment relating to the classification of stuffed sheepskin articles.

SUMMARY: Pursuant to section 625 (c), Tariff Act of 1930, 19 U.S.C. 1625 (c), this notice advises interested parties that Customs intends to modify two ruling letters pertaining to the tariff classification of stuffed sheepskin articles and revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of this action.

DATE: Comments must be received on or before December 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W. Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textile Classification Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229; 202-927-1031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North America Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade community and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, 19 U.S.C. 1625 (c)(1), this notice advises interested parties that Customs intends to modify two ruling letters pertaining to the tariff classification of stuffed sheepskin articles. Although in this notice Customs is specifically referring to two rulings, NY 817977, dated January 19, 1996, and NY D82500, dated October 14, 1998, this notice covers any ruling addressing this merchandise which may exist, but may have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.* ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, 19 U.S.C. 1625 (c)(2), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In NY 817977, a sheepskin cushion was classified in subheading 4303.90.0000, HTSUS, as "[a]rticles of apparel, clothing accessories and other articles of furskin:[o]ther." This ruling letter, NY 817977,

is set forth in "Attachment A" to this document.

In NY D82500, a sheepskin pillow and cushion were also classified in subheading 4303.90.0000, HTSUS. This ruling letter is set forth as "Attachment B" to this document.

Since the issuance of these rulings, Customs has had a chance to review the classification of this merchandise. Customs has determined that the classification decisions rendered in NY 817977 and NY D82500 require modification as to these goods.

It is now Customs belief that the sheepskin cushion of NY 817977 and the sheepskin cushion and pillow of NY D82500 are properly classified in subheading 9404.90.2000, HTSUS. Subheading 9404.90.2000 addresses "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY 817977 dated January 19, 1996, and NY D82500, dated October 14, 1998, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analyses set forth in Proposed Headquarters Ruling Letters HQ 964431, and HQ 964432, "Attachment C" and "Attachment D" to this document. Additionally, pursuant to 19 U.S.C. 1625 (c) (2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 8, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

(No Date in Original)
CLA-2-43:RR:NC:5:353 817977
Category: Classification
Tariff No. 4303.90.0000

MR. STEPHEN S. SPREITZAR
GEORGE R. TUTTLE
THREE EMBARCADERO CENTER
Suite 1160
San Francisco, CA 94111

Re: The tariff classification of a sheepskin rug, cushion and wheelchair cover from New Zealand.

DEAR MR. SPREITZAR:

In your letter dated December 21, 1995, on behalf of G.L. Bowron & Co., Ltd., you requested a tariff classification ruling.

You have requested classification of three sheepskin items, Item #LWS65QRT is described as a Longwool 4 piece rug. Item #MCLWS35 is a Longwool Cushion and Item# SWEDEV is a Wheelchair Cover.

The applicable subheading for the sheepskin rug, cushion, and wheelchair cover will be 4303.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of apparel, clothing accessories and other articles of fur skin: Other. The rate of duty will be 2 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 7.77).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Martin Weiss at 212-466-5881.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

October 14, 1998

CLA-2-43:RR:NC:3:353 D82500

Category: Classification

Tariff No. 4303.90.0000

MR. CHUANG WANG
2412 Mc Donald Ave.
Brooklyn, NY 11223

Re: The tariff classification of a sheepskin rug, pillow, cushion and bed cover from China.

DEAR MR. WANG:

In your letter dated September 9, 1998 you requested a tariff classification ruling.

Your letter states that the merchandise you will be importing are a rug, pillow, cushion, bed cover and other items made of sheepskin. No samples were submitted with your request.

The applicable subheading for the rug, pillow, cushion and bedcover made of sheepskin will be 4302.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Articles of apparel, clothing accessories and other articles of fur skin: Other." The rate of duty will be 0.7% *ad valorem*.

We cannot classify other items made of sheepskin unless we are provided with at least a full name and description.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you

have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-466-5881.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

CLA-2 RR:CR:TE 964431 BAS/jsj
Category: Classification
Tariff No. 9404.90.2000

MR. STEPHEN S. SPREITZER
MR. GEORGE R. TUTTLE
Three Embarcadero Center
Suite 1160
San Francisco, California 94111

Re: Classification of Sheepskin Cushion;
Subheading 9404.90.2000.

DEAR MR. SPREITZER AND MR. TUTTLE:

On January 19, 1996, the New York office of the Customs Service issued New York Ruling Letter (NY) 817977 to your office on the behalf of your client, G.L. Bowron & Co., Ltd., addressing the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a sheepskin rug, cushion and wheelchair cover. This letter is to inform you that upon review of NY 817977 it has been determined that NY 817977 should be modified to the extent that it addresses the sheepskin cushion. This ruling letter does not modify or revoke the classification of the sheepskin rug and wheelchair cover that were classified in heading 4303, HTSUS.

NY 817977, as it addresses the sheepskin cushion, is modified pursuant to the analysis which follows.

Facts:

In a letter dated December 21, 1995, on behalf of G.L. Bowron & Co., Ltd., you requested a tariff classification for the following three items: 1) a Longwool four piece rug (Item #LWS65QRT); 2) a Longwool Cushion (Item #MCLWS35); and 3) a Wheelchair Cover (Item #SWEDEV). This ruling letter applies only to the longwool cushion, Item # MCLWS35, which the Customs Service assumes for purposes of this analysis is a stuffed cushion and not a cushion cover.

Issue:

What is the proper classification of the longwool cushion?

Law and Analysis:

Classification decisions pursuant to the Harmonized Tariff Schedule of the United States (HTSUS) are made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and notes do not otherwise require, the remaining

GRI's may then be applied. The Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

There are two competing headings under the HTSUS that must be considered for classification of the sheepskin cushion. Heading 4303 provides for "[a]rticles of apparel, clothing accessories and other articles of furskin." Heading 9404 provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics." While the sheepskin cushion may be described as an "other article of furskin", it may also be described as an "article of bedding and similar furnishing...stuffed or internally fitted with any material."

GRI 2 (b), in pertinent part, directs that goods consisting of more than one material or substance should be classified according to the principles of GRI 3. GRI 3 (a) provides that the heading that offers the most specific description is preferred to a heading that provides a more general description. GRI 3 (a) further states that when two or more headings refer to only part of the materials or substances of a composite good the headings are to be considered equally specific in relation to those goods.

The Explanatory Notes to heading 4303, HTSUS, state that heading 4303 encompasses articles such as rugs, coverlets and unstuffed pouffes. The EN declares that heading 4303 additionally covers "all other articles, including parts, made of furskin, or in which furskin gives the essential character."

The EN to heading 9404, HTSUS, provides several examples of articles of bedding and similar furnishing "which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.) or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.)." Examples include *inter alia* pillows, cushions, and pouffes. Considering that heading 9404 specifically identifies cushions as an article of bedding or similar furnishing, the subject merchandise is "ejusdem generis" or "of the same kind" of merchandise as the exemplars set forth in the EN to heading 9404.

The sheepskin cushion, in accordance with the dictates of GRI 3 (a) that classification decisions be based on the heading that provides the more specific description, is properly classified in heading 9404. Subsequent to a review of headings 4303 and 9404 and the Explanatory Notes to the respective headings, it is the conclusion of this office that heading 9404 is the more specific. Heading 9404, providing for mattress supports, articles of bedding and similar furnishing stuffed or internally fitted with any material, describes the entire article. Heading 9404 specifically identifies cushions as an example of an article of bedding or a similar furnishing. Heading 4303 which addresses other articles of furskin, conversely, only describes part of the cushion. Heading 9404 is, therefore, more specific than heading 4303.

Having established that the proper heading for the stuffed sheepskin cushion is 9404, HTSUS, classification must then be made at the appropriate subheading level. GRI 6 provides that, for legal purposes, classification in the subheadings of a heading is determined in accordance with the terms of the subheadings, any related subheading notes and in accordance with the proceeding general rules of interpretation. Only subheadings at the same level are comparable. GRI 6 essentially applies the principles of GRI 1 through 5 in classifying goods at the subheading level. In addition, in the application of GRI 6, classification must be effected at the six-digit level before proceeding to the eight-digit level.

The item in issue is described by the importer as a "cushion." Since it is not a mattress support, mattress or sleeping bag, the proper subheading for the sheepskin cushion is 9404.90, HTSUS. Subheading 9404.90 provides for "Other: Pillows, cushions, and similar furnishings."

The final step in the analysis requires determination as to whether the seat cushion is appropriately classified pursuant to subheading 9404.90.1000, HTSUS,

which provides for "Pillows, cushions and similar furnishings: Of cotton," or subheading 9404.90.2000, HTSUS, which provides for "Pillows cushions and similar furnishings: Other." Implementation of GRI 6 to the facts of this classification ruling results in the application of GRI 3(b). General Rule of Interpretation 3 (b) provides that mixtures and composite goods consisting of different materials or made up of different components "shall be classified as if they consisted of the material or component which gives them their essential character." The Custom Service has determined in previous rulings that it is the outer shell or covering that imparts the essential character of certain bedding articles and similar furnishings falling under heading 9404. See HQ 952479, dated January 4, 1993 (baby seat cushions); HQ 951528, dated August 14, 1992 (infant seat cushion); and HQ 951526, dated August 14, 1992 (infant seat cushion).

The outer shell, in the instant case, provides comfort for the user, decoration and gives this merchandise its distinctiveness. Consequently, the cushion is classifiable, in accordance with prior rulings, as if consisting only of the outer shell.¹

Holding:

The instant sheepskin cushion made of genuine sheepskin/natural wool is properly classified in subheading 9404.90.2000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

The general column one rate of duty is 6 percent *ad valorem*.

New York Ruling Letter 817977 is hereby modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

CLA-2 RR:CR:TE 964432 BAS/sj
Category: Classification
Tariff No. 9404.90.2000

MR. CHUANG WANG
2412 McDonald Avenue
Brooklyn, NY 11223-5231

Re: Classification of Sheepskin Cushion and Pillow;
Subheading 9404.90.2000.

DEAR MR. WANG:

On October 14, 1998, the New York office of the Customs Service issued New York Ruling Letter D82500 to you addressing the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a sheepskin rug, pillow, cushion and bed cover from China. This letter is to inform you that upon review of D82500, it has been determined that it should be modified to the extent that it addresses the sheepskin cushion and pillow. This ruling letter does not modify or revoke the classification of the sheepskin rug and bed cover that were

¹ This analysis assumes that the outer shell of the cushion is composed entirely of sheepskin/natural wool.

classified in heading 4303, HTSUS.

New York Ruling Letter D82500, as it addresses the sheepskin cushion and pillow, is modified pursuant to the analysis which follows.

Facts:

In a letter dated September 9, 1998, you requested a tariff classification for a rug, pillow, cushion, bed cover and other items made of sheepskin. You did not provide any samples of the items at that time. This ruling letter applies only to the pillow and cushion which the Customs Service assumes for purposes of this analysis are items that are stuffed with some material.

Issue:

What is the proper classification of the sheepskin cushion and pillow?

Law and Analysis:

Classification decisions pursuant to the Harmonized Tariff Schedule of the United States (HTSUS) are made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

There are two competing headings under the HTSUS that must be considered for classification of the sheepskin cushion and pillow. Heading 4303 provides for "[a]rticles of apparel, clothing accessories and other articles of furskin." Heading 9404 provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics." While the sheepskin cushion and pillow may be described as "other article of furskin", they may also be described as "article[s] of bedding and similar furnishing[s]...stuffed or internally fitted with any material."

GRI 2 (b), in pertinent part, directs that goods consisting of more than one material or substance should be classified according to the principles of GRI 3. GRI 3 (a) provides that the heading that offers the most specific description is preferred to a heading that provides a more general description. GRI 3 (a) further states that when two or more headings refer to only part of the materials or substances of a composite good the headings are to be considered equally specific in relation to those goods.

The Explanatory Notes to heading 4303, HTSUS, state that heading 4303 encompasses articles such as rugs, coverlets and unstuffed pouffes. The EN declares that heading 4303 additionally covers "all other articles, including parts, made of furskin, or in which furskin gives the essential character."

The EN to heading 9404, HTSUS, provides several examples of articles of bedding and similar furnishing "which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.) or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.)." Examples include *inter alia* pillows, cushions, and pouffes. Considering that heading 9404 specifically identifies cushions and pillows as articles of bedding or similar furnishings, the subject merchandise is "ejusdem generis" or "of the same kind" of merchandise as the exemplars set forth in the EN to heading 9404.

The sheepskin cushion and pillow, in accordance with the dictates of GRI 3 (a) that classification decisions be based on the heading that provides the more specific description, are properly classified in heading 9404. Subsequent to a review of headings 4303 and 9404 and the Explanatory Notes to the respective headings, it

is the conclusion of this office that heading 9404 is the more specific. Heading 9404, providing for mattress supports, articles of bedding and similar furnishing stuffed or internally fitted with any material, describes the entire articles. Heading 9404 specifically identifies cushions and pillows as examples of articles of bedding or similar furnishings. Heading 4303 which addresses other articles of furskin, conversely, only describes part of the cushion and pillow. Heading 9404 is, therefore, more specific than heading 4303.

Having established that the proper heading for the stuffed sheepskin cushion and pillow is 9404, HTSUS, classification must then be made at the appropriate subheading level. GRI 6 provides that, for legal purposes, classification in the subheadings of a heading is determined in accordance with the terms of the subheadings, any related subheading notes and in accordance with the proceeding general rules of interpretation. Only subheadings at the same level are comparable. GRI 6 essentially applies the principles of GRI 1 through 5 in classifying goods at the subheading level. In addition, in the application of GRI 6, classification must be effected at the six-digit level before proceeding to the eight-digit level.

The items in issue are described by the importer as a cushion and a pillow. Since they are not a mattress support, mattress or sleeping bag, the proper subheading for the sheepskin cushion and pillow is 9404.90, HTSUS. Subheading 9404.90 provides for "Other: Pillows, cushions, and similar furnishings."

The final step in the analysis requires determination as to whether the cushion and pillow are appropriately classified pursuant to subheading 9404.90.1000, HTSUS, which provides for "Pillows, cushions and similar furnishings: Of cotton," or subheading 9404.90.2000, HTSUS, which provides for "Pillows cushions and similar furnishings: Other." Implementation of GRI 6 to the facts of this classification ruling results in the application of GRI 3(b). General Rule of Interpretation 3 (b) provides that mixtures and composite goods consisting of different materials or made up of different components "shall be classified as if they consisted of the material or component which gives them their essential character." The Custom Service has determined in previous rulings that it is the outer shell or covering that imparts the essential character of certain bedding articles and similar furnishings falling under heading 9404. See HQ 952479, dated January 4, 1993 (baby seat cushions); HQ 951528, dated August 14, 1992 (infant seat cushion); and HQ 951526, dated August 14, 1992 (infant seat cushion).

The outer shells, in the instant case, provide comfort for the user, decoration and give this merchandise its distinctiveness. Consequently, the cushion and pillow are classifiable, in accordance with prior rulings, as if consisting only of the outer shell.²

Since the outer shell of these items is genuine sheepskin/natural wool they are properly classified in subheading 9404.90.2000, HTSUS, providing for "pillows, cushions and similar furnishings: Other."

Holding:

The instant sheepskin cushion and pillow made of genuine sheepskin/natural wool are properly classified in subheading 9404.90.2000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

The general column one rate of duty is 6 percent *ad valorem*.

New York Ruling Letter D82500 is hereby modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

² This analysis assumes that the outer shell of the cushion is composed entirely of sheepskin/natural wool.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF POWER WASHERS

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of power washers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three (3) rulings and modify five (5) others, all relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of power washers, and to revoke any treatment Customs has previously accorded to substantially identical transactions. Also known as pressure washers and washer/cleaners, these are devices whose function is to clean the surfaces of building exteriors, cars, boats, decks, sidewalks, machinery and tools utilizing water under high-pressure, with or without heat, and/or a water and chemical solution. In the main, these devices incorporate a high-pressure pump, high-pressure hose, hand-held trigger gun with spray wand, and nozzle. They come in both commercial and domestic models, some mounted on wheeled chassis and some floor-mounted, and have either gasoline-powered or electric motors. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before December 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compli-**

ance" and **"shared responsibility."** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke three (3) rulings and modify five (5) others, all relating to the tariff classification of power washers, pressure washers and washer/cleaners. Although in this notice Customs is specifically referring to eight rulings, HQ 952868, dated November 26, 1993, NY C88579, dated June 4, 1998, NY 838201, dated March 28, 1989, NY 838018, dated March 17, 1989, NY 837810, dated March 17, 1989, NY 843315, dated July 13, 1989, NY 896995, dated April 25, 1994, and NY E83107, dated June 17, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY C88579, dated June 4, 1998, pressure washers consisting basically of either electric or gasoline-powered, motor-driven pumps which force water through a hose and nozzle to create a high pres-

sure to clean a target article's surface area were held to be classifiable in subheading 8424.89.70, HTSUS, as other mechanical appliances for projecting, dispersing or spraying liquids or powders. This ruling was based on Customs belief that the devices met this tariff description. NY C88579 is set forth as "Attachment A" to this document. NY 838201, NY 838018, HQ 952868, NY 837810, NY 843315, NY 896995, and NY E83107, classified substantially similar merchandise in the same or equivalent tariff provision. These rulings are set forth as "Attachments B through H" to this document, respectively.

It is now Customs position that these power washers, pressure washers, or washer/cleaners are classifiable in subheading 8424.30.90, HTSUS, as other steam or sand blasting machines and similar jet projecting machines. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY C88579, and NY 838201, NY 838018, HQ 952868, NY 837810, NY 843315, NY 896995, and NY E83107, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 964635, HQ 964636, HQ 964637, HQ 964658, HQ 964664, HQ 964665, HQ 964666, and HQ 964667, which are set forth as "Attachments I through P" to this document, respectively.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 13, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

June 4, 1998
CLA-2-84:RR:NC:MM:106 C88579
Category: Classification
Tariff No. 8424.89.7090

MR. DANNY ECKEL
THE CAMPBELL GROUP
100 Production Drive
Harrison, Ohio 45030

Re: The tariff classification of pressure washers from Italy.

DEAR MR. ECKEL:

In your letter dated May 18, 1998, you requested a tariff classification ruling. You submitted descriptive literature with your request.

The articles in question are various models of pressure washers used to clean house exteriors, cars, decks, boats, lawn equipment, sidewalks, gutters, patio furniture, and so on, and professional models used for industrial cleaning of heavy equipment. The pressure washers consist basically of either electric or gas powered, motor driven pumps which force water through a hose and nozzle to attain a high pressure spray to clean the surface.

You suggest that the various models of pressure washers are similar to steam or sand blasting machines and similar jet projecting machines and should be classified in the subheading associated with these appliances. We do not agree with this position. Steam or sand blasting machines and similar jet projecting machines are generally used for applying an abrasive medium, such as sand, metal pellets, blasted steam or the like, on to a surface in such a way as to essentially remove a surface layer. The pressure washers in question do not impact the surfaces they clean in such a way nor do they apply an abrasive medium to render a new surface.

The applicable subheading for the pressure washers will be 8424.89.7090, Harmonized Tariff Schedule of the United States (HTS), which provides for other mechanical appliances for projecting, dispersing or spraying liquids. The rate of duty will be 2.2 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick J. Wholey at 212-466-5668.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

March 28, 1989
CL.A-2-84:S:N:N1:106-838201
Category: Classification
Tariff No. 8424.89.0090

MS. BARBARA M. EDWARDS
KREUSLER INT'L SERVICES, INC.
P.O. Box 66379
AMF O' Hare
Chicago, Illinois 60666

Re: The tariff classification of a power washer from Taiwan.

DEAR MS. EDWARDS:

In your letter dated March 9, 1989, on behalf of Builders Square, Inc., you requested a tariff classification ruling.

You have enclosed literature describing the model PW-820G 3 1/2 HP Power Washer. The washer is mounted on a frame with three wheels and a handlebar for maneuverability. The spray mechanism is controlled by a trigger: depress the

trigger to spray and release the trigger to stop. Regulation of spray pressure and spray angle is governed by manipulating the nozzle. This power washer has a gasoline engine, stainless steel piston, low pressure cleanser control, water capacity of 3.0 GPM and a gross weight of 68 kgs. The spray apparatus is used to wash automobiles, floors, malls, fences, *etc.*

The applicable subheading for the model PW-820G Power Washer will be 8424.89.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders. The rate of duty will be 3.7 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

March 17, 1989
CLA-2-84:S:N:N1:106 838018
Category: Classification
Tariff No. 8424.89.0090

MR. DAVID A. WALSER
ARTHUR J. HUMPHREYS, INC.
CUSTOMS BROKERS
P.O. Box 249
Sudas, WA 98295

Re: The tariff classification of a pressure washer from Canada.

DEAR MR. WALSER:

In your letter dated March 7, 1989, on behalf of Braber Equipment Ltd., you requested a tariff classification ruling.

You indicate the model Wet Jet Pressure Washer is powered by a 5 horsepower gasoline engine. A hose is run from a water tap and connected to the pressure washer. The washer has no self-contained holding tank. The apparatus may be used by a farmer to spray clean milking parlors or to clean other agricultural machinery.

The applicable subheading for the Wet Jet Pressure Washer will be 8424.89.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders. The rate of duty will be 3.7 percent *ad valorem*.

Goods classifiable under subheading 8424.39.0090, HTS, which have originated in the territory of Canada, will be entitled to a 2.9 percent rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

Subheading 9317.00.50, free of duty, is the HTS provision for machinery, equipment and implements to be used for agricultural or horticultural purposes. In the

alternative, upon the submission of actual use certificates, as provided in Section 10.131 - 10.139 of the Customs Regulations, the Jet Pressure Washer may be classifiable in subheading, 9817.00.50, if actually used in agricultural pursuits.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

November 26, 1993
CLA-2-CO:R:C:M 952868 JAS
Category: Classification
Tariff No. 8424.89.00

DISTRICT DIRECTOR OF CUSTOMS
610 South Canal Street
Chicago, IL 60607

Re: PRD 3901-92-100453; Mechanical Appliance for Spraying Liquids, High Pressure Cleaner, Agricultural Sprayer/Cleaner, Subheading 8424.81.10, Other Sprayer; Principal Use in Agricultural Purposes, Additional U.S. Rule 1(a); HQ 088999; Machinery, Equipment and Implements to be Used for Agricultural or Horticultural Purposes, Heading 9817.00.50, NY 838018.

DEAR SIR:

This is our decision on Application for Further Review of Protest No. 3901-92-100453, filed by counsel on behalf of K.E.W. Cleaning Systems, (U.S.A.), Inc., against your action in classifying certain mechanical sprayers from Denmark. The entry under protest was liquidated on December 6, 1991, and this protest timely filed on March 5, 1992.

Facts:

The sprayer/cleaner models in issue are as follows:

2802V	25A2K	4003K	4503KB
1502V	1002K	5203K	Professional
3803V	1702K	1702KSA	Contractor
5003V	2903K	4003KSA	

The sprayers consist of the following components: (1) a high pressure pump powered either by an electric motor or an air cooled internal combustion engine; (2) inlet connection to connect cold water supply to the sprayer; (3) where applicable, an electric cable to connect the electric motor to the power supply; (4) a high pressure hose and spray wand with flat jet nozzle; and (5) a boiler system for hot water models. All components are in a common housing mounted on a wheeled frame.

The merchandise was entered under the duty-free provision for agricultural or horticultural sprayers (except self-contained sprayers having a capacity not over 20 liters), in subheading 8424.81.10, Harmonized Tariff Schedule of the United States (HTSUS). Counsel maintains that high pressure cleaning to remove manure from barns and stalls for sanitary purposes, and for cleaning agricultural machinery is a legitimate agricultural use, and that these units are principally marketed to the agricultural industry for these purposes.

You liquidated the entry under protest under provision for other mechanical appliances for spraying liquids or powders, in subheading 8424.89.00, HTSUS. In your opinion the washing of barns and stalls and agricultural machinery has not been shown to be an agricultural use.

The provisions under consideration are as follows:

8424 Mechanical appliances for projecting,
 dispersing or spraying liquids or powders

* * * * *

Other appliances:

8424.81.10 Agricultural or horticultural: Sprayers
 (except sprayers, self-contained, having
 a capacity not over 20 liters)...Free

* * * * *

8424.89.00 Other...3.7 percent

Issue:

Whether high pressure cleaning is, *per se*, an agricultural or horticultural pursuit; whether the units under protest, or any of them, are principally used in such pursuits.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Additional U.S. Rule of Interpretation 1(a), HTSUS, states in part that a classification controlled by use is to be determined by the use in the United States at, or immediately prior to, the date of importation, of goods of that class of kind to which the imported goods belong, and the controlling use is the principal use.

Regarding the first issue, not all implements, apparatus or equipment used on a farm are necessarily "agricultural or horticultural" for tariff purposes. Some implements have design features that dedicate them specifically to agricultural or horticultural applications. Devices specifically designed and used for spraying insecticides, pesticides or disinfectants in agricultural or horticultural environments have a rational and obvious relationship to the production of food or clothing. We have routinely held these to be agricultural or horticultural implements. In this case, we have held that the spray cleaning/ washing of barns or stalls to remove manure and other noxious contaminants for sanitary reasons is a legitimate agricultural pursuit. HQ 088999, dated October 15, 1991. However, it is important to note that under the HTSUS's predecessor tariff code, the Tariff Schedules of the United States (TSUS), the test for agricultural sprayers was whether they were suitable for such use. Under the HTSUS, however, the test is

principal use; that is, the use which exceeds each other single use of the goods.

Counsel maintains that the subject sprayers meet the physical description of agricultural sprayers of subheading 8424.81.10. Counsel also asserts through brochures and literature that nearly 50 percent of K.E.W.'s advertising is geared to the agricultural or horticultural community. Moreover, a summary of end use data gleaned from warranty cards at or immediately before the date of importation, returned to K.E.W. by actual purchasers, purports to establish principal use in agricultural or horticultural pursuits. In our opinion, this information is indicative of the actual use of protestant's sprayers, but is not dispositive of the issue of principal use.

Finally, in a submission, dated November 23, 1993, counsel offers the results of a recent survey conducted by the Cleaning Equipment Trade Association (CETA), as evidence that these sprayers are principally used in agricultural or horticultural pursuits. Initially, we note that of the 17 CETA members queried only 10 responded. Counsel notes that 21.5 percent of the respondents' total dollar sales volume - the single highest percentage - went to the agricultural/horticultural industry, with the remainder divided by lesser percentages among 7 different classes of end users. This, he concludes, is evidence of principal use. In our opinion, this data can reasonably be interpreted as evidence of 78.5 percent non-agricultural/ horticultural use. Moreover, in an affidavit counsel previously submitted to support the principal use issue, William G. Lindsay, Executive Director of CETA, states that his organization has over 300 members. It is therefore difficult to base any conclusions on the submitted data where such a substantial number of potential end users are unreported. More importantly, because in a principal use context it is the time period at or immediately prior to the date of importation that must be examined, results of a survey begun and concluded in 1993 have little or no probative value with respect to a 1991 entry.

Heading 9817.00.50, HTSUS, accords free entry to machinery, equipment and implements to be used for agricultural or horticultural purposes. This is a provision governed by actual use. In order to qualify for free entry under this provision use of the sprayers in agriculture or horticulture must be intended at the time of importation, the sprayers must be so used, and proof of such use must be furnished as prescribed by Section 10.133, Customs Regulations. NY 838018.

Holding:

The protest should be denied except to the extent that compliance with the requirements of heading 9817.00.50 results in a full or partial allowance.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, Lexis, the Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

March 17, 1989
CLA-2-84:S:N:1:106 837810
Category: Classification
Tariff No. 8424.89.0090

MR. SILVIO FAVRIN
J. C. HALLMAN MANUFACTURING CO., LTD.
141 Weber Street S.
Waterloo, Ontario, Canada N2T 2A9

Re: The tariff classification of high pressure washers from Canada.

DEAR MR. FAVRIN:

In your letter dated February 24, 1989, you requested a tariff classification ruling.

You have enclosed literature describing the Hallman High Pressure Washers as electrically powered machines consisting basically of a motor-driven pump which increases water pressures as are present in faucets to 1,000 pounds per square inch. Water is delivered through a high-pressure hose to a gun assembly and is sprayed on the apparatus to be cleaned. Germicides and detergents may be injected into the high pressure water. The entire mechanism is housed in a heavy metal casing having a plastic cover and is equipped with three wheels and a handle for maneuverability. Features include a 1 1/2 H. P. electric motor, a twin ceramic piston pump, nozzle, backflow preventer and safety guarded on/off switch. The imported product may be used to spray clean farm machinery and other products.

The applicable subheading for the Hallman High Pressure Washers will be 8424.89.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders. The rate of duty will be 3.7 percent *ad valorem*.

Goods classifiable under subheading 8424.89.0090, HTS, which have originated in the territory of Canada, will be entitled to a 2.9 percent rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

Subheading 9817.00.50, free of duty, is the HTS provision for machinery, equipment and implements to be used for agricultural or horticultural purposes. In the alternative, upon the submission of actual use certificates, as provided in Section 10.131-10.139 of the Customs Regulations, the Hallman High Pressure Washers may be classifiable in subheading 9817.00.50, if actually used in agricultural pursuits.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations [19 C.F.R. 177].

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT F]

July 13, 1989

CLA 2 84:S:N:N1:106 843315

Category: Classification

Tariff Nos. 7308.90.9090; 8424.89.0090

Ms. SUSAN E. CARR
C.J. TOWER INC.
128 Dearborn Street
Buffalo, NY 14207-3198

Re: The tariff classification of a farrowing crate, a V-Bar, panelling, "comfy cool farrowing", gestation stalls and pressure washers from Canada.

DEAR Ms. CARR:

In your letter dated June 13, 1989, you requested a tariff classification ruling on behalf of Bill's Stabling & Mfg. Ltd.

The pressure washers are used with spray-guns in the cleaning of housing facilities for animals particularly hog and dairy. They vary essentially in construction (portable or stationary), in operating-pressure, and whether electric or gas-operated.

The applicable subheading for the pressure washers will be 8424.89.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other mechanical appliances for projecting, dispersing or spraying liquids or powders. The duty rate will be 3.7%

The other items are structures or parts of structures used in the raising of pigs.

The applicable subheading for the farrowing crate, the V-Bar, panelling, "comfy cool farrowing" and gestation stalls will be 7308.90.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other structures and parts thereof. The duty rate will be 5.7%.

Goods classifiable under subheading 8424.89.0090, NTS, which have originated in the territory of Canada, will be entitled to a 2.9% rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

Goods classifiable under subheading 7308.90.0090, HTS, which have originated in the territory of Canada, will be entitled to a 5.1% rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

In the alternative, subject to actual use certification in keeping with Sections 10.131-10.139 of the Customs Regulations these items other than parts are classified in HTS item number 9817.00.5000 free of duty which covers machinery, equipment and implements to be used for agricultural or horticultural purposes.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT G]

April 25, 1994
CLA-2-84 :S:N:N1:106 896995
Category: Classification
Tariff No. 8424.89.0080

Ms. TRACEY ELLMAN
PBB GROUP
434 Delaware Ave
Buffalo, NY 14202

Re: The tariff classification of a rower spray washer from Canada.

DEAR Ms. ELLMAN:

In your letter dated April 14, 1994, on behalf of Proceco Industrial Machinery Ltd., Montreal, Quebec, Canada, you requested a tariff classification ruling. You have submitted descriptive and illustrative literature.

The imported product is a Typhoon-HD heavy duty power spray washer that combines chemical, heat and mechanical scrubbing action of its spray jets for fast cleaning action. The literature states that the Typhoon-HD power spray washers come in various models, with turntable diameters ranging from 26 inches to 120 inches, work height ranging from 36 inches to 120 inches, and turntable capacity ranging from 1,000 pounds to 20,000 pounds (larger models are available on request). The mode of heating may be electric, gas or steam. The rinse water may drain into a tank or it may be diverted into the sewer. The material to be cleaned or washed rotates while it is sprayed from all sides.

The Typhoon-HD machine features a tank and cabinet fabricated of 3/16 inch or 1/4 inch steel plate and all-welded construction; one inch polyurethane insulation and a steel outer shell, plus a two component epoxy finish, a fused disconnect switch; timers for the wash cycle, rinse and exhaust; a push button on/off switch; an automatic solution lever control; a thermostat for automatic temperature control; a turntable drive; removable twin stainless steel screens; electric heating with a stainless steel immersion element; a door and turntable both mounted on ball bearings so they swing out together; and a steel labyrinth door seal.

Other features include a turntable drive with roller chain; a drip tray that keeps the floor dry and safe; a seven day programmable timer; a fresh water inlet with strainer and solenoid valve for rinse and rapid filling of the tank; an automatic level control; a removable cover plate that serves as a drain plate and clean-out access; an air inlet and pneumatic control for oscillating the central nozzle pipe; and a T.F.F.C. motor.

The Typhoon-HD spray washer may be used for heavy duty degreasing, glue pot cleaning and rinsing, inkpot cleaning, paint stripping, rust proofing, phosphating prior to rinsing, and/or other industrial purposes.

The applicable subheading for the Typhoon-HD heavy duty power spray washer will be 8424.89.0080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders. The general rate of duty will be 3.7 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT H]

June 17, 1999

CLA-2-84:RR:NC:MM:106 E83107

Category: Classification

Tariff No. 8424.89.7090

MR. DAVID WALSER
 ARTHUR J. HUMPHREYS DIV.
 BORDER BROKERAGE CO., INC.
 P. O. Box 249
 Sumas WA 98295

Re: The tariff classification and status under the North American Free Trade Agreement (NAFTA) of a pressure washer from Canada; Article 509.

DEAR MR. WALSER:

In your letter dated June 1, 1999, on behalf of BE Pressure Supply Inc., you requested a ruling on the status of a pressure washer from Canada under the NAFTA. You included descriptive literature and other information with your request.

The merchandise in question is the PE-4013 Pressure Washer which is to be assembled in Canada from both NAFTA-originating and non-originating components. The PE-4013 Pressure Washer consists basically of a 13 HP gasoline engine which powers a 4000 PSI - 4GPM pump to force water through a hose and nozzle to attain a high-pressure projection to clean a variety of surfaces, such as house exteriors, cars, decks, sidewalks, gutters, heavy equipment and the like. The major components that are assembled in Canada to form the complete pressure washer are: a Honda "GX" 13 HP internal combustion piston engine, a Comet 4000 PSI - 4GPM pump, a chrome frame, 13 inch pneumatic tires with rims, an adjustable control unloader, a thermal relief valve, a 50 foot pressure hose with couplers, a chemical injector kit, a 5000 PSI pressure gauge, a 4000 PSI gun with 36 inch insulated wand and 4 nozzles.

All components used in the assembly of the pressure washer are said to be products of North America, with the exception of certain nuts and bolts from China, the pump assembly from Japan, the gun assembly and wand assembly from Italy, the engine from Japan, the cart frame from China and the wheel (steel rim and pneumatic tire) from China.

The applicable tariff provision for the PE 4013 Pressure Washer will be 8424.89.7090, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other mechanical appliances for projecting, dispersing or spraying liquids or powders. The general rate of duty will be 1.8 percent *ad valorem*.

To be eligible for tariff preferences under the North American Free Trade Agreement (NAFTA), goods must be "originating goods" within the rules of origin in General Note 12(b)(i), HTSUS. The pressure washers are not wholly obtained in the U.S. or Canada because they incorporate non-originating materials (the pump, the engine and so on, as above). However, the non-originating goods may be "transformed in the territory of Canada, Mexico and/or the United States" pursuant to General Note 12(b)(ii), HTSUS, which states:

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein...

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note...

You propose the manufacture of pressure washers from entirely U.S. and Canadian origin materials, with the exception of the goods noted above. General Note 12(t)/84.65(A), HTSUS, regarding NAFTA, provides as follows:

A change to subheadings 8424.10 through 8424.89 from any other heading.

All but two of the non-originating materials used to make the pressure washers have satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/84.65(A). The non-originating gun assembly and the wand assembly do not undergo the change in tariff classification required under HTSUSA General Note 12(t)/84.65(A). However, since these non-originating assemblies constitute no more than 7 percent of the transaction value of the completed pressure washers, adjusted to a F.O.B. basis, they shall be considered as originating goods in accordance with the De Minimis rule found in HTSUSA General Note 12(f)(i). Therefore, the pressure washers will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick Wholey at 212-637-7036.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT I]

CLA-2 RR:CR:GC 964635 JAS

Category: Classification

Tariff No. 8424.30.90

MR. DANNY ECKEL
THE CAMPBELL GROUP
100 Production Drive
Harrison, Ohio 45030

Re: NY C88579 Revoked; Pressure Washer.

DEAR MR. ECKEL:

In NY C88579, which the Director of Customs National Commodity Specialist Division, New York, issued to you on June 4, 1998, certain pressure washers from Italy were held to be classified in subheading 8424.89.70, Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The merchandise in NY C88579 was described as a pressure washer used to clean house exteriors, cars, decks, boats, lawn equipment, sidewalks, gutters, patio furniture, among other things. It consisted basically of either electric or gasoline-powered, motor driven pumps which force water through a hose and nozzle to attain a high pressure spray to clean the surface of the target article.

Power washers of this type take low-pressure tap water, pass it through a pump to increase the water's exit pressure, then through a high-pressure hose, handgun and spray lance to a high-pressure rotary nozzle. At lower pressures some models may have a suction hose that draws detergent or other cleaning solvent from a reservoir into the system to enhance the washer's cleaning capability.

In the ruling request that became NY C88579, you maintained that the power washers were jet projecting machines similar to steam or sand blasting machines, of the type classifiable in subheading 8424.30.90, HTSUS. We rejected that claim on the basis of our belief that the power washers did not function in the manner of jet projecting machines similar to steam or sand blasting machines.

The HTSUS provisions under consideration are as follows:

8424	Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines:
8424.30.80 (now 90)	Other steam or sand blasting machines and similar jet projecting machines
8424.89	Other:
8424.89.70	Other

Issue:

Whether power washers or pressure washers are jet projecting machines similar to steam or sand blasting machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In our opinion, whether power washers are jet projecting machines "similar" to steam or sand blasting machines, requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the power washers the subject of NY C88579 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, etc., by subjecting the articles to the action of high pressure jets of sand, metal abrasives, etc. They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, etc.

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and power washers all have the same essential components, *i.e.*, motor, pump and spraying wand; steam blast appliances and power washers commonly incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle or narrow opening. We conclude that in terms of design, construction, function and use, the power washers at issue are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, however, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar to the ones at issue here in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the power washers, as described, are provided for in heading 8424. They are classifiable in subheading 8424.30.90, HTSUS. NY C88579, dated June 4, 1998, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

CLA-2 RR:CR:GC 964636 JAS
Category: Classification
Tariff No. 8424.30.90

MS. BARBARA M. EDWARDS
KREUSLER INT'L SERVICES, INC.
P.O. Box 66379
AMF O'Hare
Chicago, Illinois 60666

Re: NY 838201 Revoked; Pressure Washer.

DEAR MS. EDWARDS:

In NY 838201, dated March 28, 1989, which the Area Director of Customs (now Director of Customs National Commodity Specialist Division), New York, issued to you on behalf of Builders Square, Inc., the model PW-820G power washer was held to be classified in subheading 8424.89.00, Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The merchandise in NY 838201 was described as a 3 ½ hp power washer mounted on a frame with three wheels and equipped with a handlebar. The power washer has a gasoline-powered engine, stainless steel piston, low pressure cleanser control, and a trigger-controlled spray mechanism. It has a water capacity of 3 GPM and a gross weight of 68 kgs. The power washer was advertised for use in washing automobiles, floors, walls, fences, *etc.*

The HTSUS provisions under consideration are as follows:

- | | |
|----------------------------|---|
| 8425 | Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines: |
| 8425.30.80 (now 90) | Other steam or sand blasting machines and similar jet projecting machines |
| 8424.90 | Other: |
| 8424.89.00 (now 70) | Other |

Issue:

Whether power washers are jet projecting machines similar to steam or sand blasting machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In our opinion, whether power washers are jet projecting machines "similar" to steam or sand blasting machines, requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the power washers the subject of NY 838201 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, *etc.*, by subjecting the articles to the action of high pressure jets of sand, metal abrasives, *etc.* They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, *etc.*

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and power washers all have the same essential components, *i.e.*, motor, pump or piston and spraying wand; steam blast appliances and power washers

often incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle or narrow opening. We conclude that in terms of design, construction, function and use, the power washers at issue are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, however, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar to the ones at issue here in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the power washers, as described, are provided for in heading 8424. They are classifiable in subheading 8424.30.90, HTSUS. NY 838201, dated March 28, 1989, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

CLA-2 RR:CR:GC 964637 JAS
Category: Classification
Tariff No. 8424.30.90

MR. DAVID A. WALSER
ARTHUR J. HUMPHREYS DIV.
BORDER BROKERAGE CO., INC.
P.O. Box 249
Sumas, WA 98295

Re: NY 838018 Modified; Wet Jet Pressure Washer.

DEAR MR. WALSER:

In NY 838018, dated March 17, 1989, which the Area Director of Customs (now the Director of Customs National Commodity Specialist Division), New York, issued to you on behalf of Braber Equipment, Ltd., the Wet Jet Pressure Washer, a product of Canada, was held to be classified in subheading 8424.89.00 (now 70), Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders.

NY 838018 also held that the Wet Jet Pressure Washer qualified for duty-free entry under subheading 9817.00.50, HTSUS, as machinery, equipment and implements to be used for agricultural or horticultural purposes, if actually used in agricultural pursuits, and upon compliance with sections 10.131-10.139 of the

Customs regulations. We have reconsidered the subheading 8424.89.00 classification and now believe that it is incorrect.

Facts:

The merchandise in NY 838018 was described as a pressure washer powered by a 5 hp gasoline engine with no self-contained holding tank. It utilizes tap water run through a hose which enables a farmer to spray-clean milking parlors or farm machinery. The ruling contained no further description of the device. Pressure washers of this type may be on a wheeled chassis or floor mounted, may be powered by electric or gasoline motors, and incorporate pumps or pistons, hose and nozzle. Generally, they take low-pressure tap water, pass it through a pump or piston to increase the water's exit pressure, then through a high-pressure hose, handgun and spray lance to a high-pressure nozzle or other aperture.

The HTSUS provisions under consideration are as follows:

8426	Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines:
8426.30.80 (now 90)	Other steam or sand blasting machines and similar jet projecting machines
8424.91	Other:
8424.89.00 (now 70)	Other

Issue:

Whether the pressure washer is a jet projecting machine similar to steam or sand blasting machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In our opinion, whether the pressure washer at issue is a jet projecting machine "similar" to steam or sand blasting machines, requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the pressure washers the subject of NY 838018 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, etc., by subjecting the articles to the action of high pressure jets of sand, metal abrasives, etc. They are usually fitted with dust extractors to remove the residual sand and dust. The

heading also covers steam blast appliances used, for example, for de-greasing machined metal, *etc.*

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and power washers all have the same or similar essential components, *i.e.*, motor, pump and spraying wand or nozzle of some type; steam blast appliances and power washers sometimes incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle or narrow opening. We conclude that in terms of design, construction, function and use, the pressure washers at issue in NY 838018 are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar to the Wet Jet Pressure Washer in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the pressure washers, as described, are provided for in heading 8424. They are classifiable in subheading 8424.30.90, HTSUS. NY 838018, dated March 17, 1989, is modified as to this classification. However, the pressure washers remain eligible for classification under subheading 9817.00.50, HTSUS, upon compliance with applicable law and Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I.]

CLA-2 RR:CR:GC 964658 JAS
Category: Classification
Tariff No. 8424.30.90

MR. PAUL S. ANDERSON
SONNENBERG, ANDERSON & RODRIGUEZ
200 South Wacker Drive, 33rd Floor
Chicago, Illinois 60606

Re: HQ 952868 Modified; Mechanical Sprayers.

DEAR MR. ANDERSON:

In HQ 952868, dated November 26, 1993, certain K.E.W. Cleaning Systems (U.S.A.), Inc., mechanical sprayers or high pressure cleaners were held to be classifiable in subheading 8424.89.00 (now 70), Harmonized Tariff Schedule of the

United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders. The high pressure cleaners were also found to be eligible under subheading 9817.00.50, HTSUS, as machinery, equipment and implements to be used for agricultural or horticultural purposes, upon compliance with applicable law and Customs Regulations.

We have reconsidered the subheading 8424.89.00 classification and now believe that it is incorrect. We believe that the mechanical sprayers are jet projecting machines similar to steam or sand blasting machines. However, because HQ 952868 was a decision on Application for Further Review of Protest 3901-92-100453, any reliquidation of the entry in this protest will be unaffected by this decision.

Facts:

The merchandise in HQ 952868 was identified as the sprayer/cleaner models 2802V, 25A2K, 4003K, 4503KB, 1502V, 1002K, 5203K, 3803V, 1702K, 1702KSA, 5003V, 2903K, 4003KSA, and the Professional and Contractor models. The sprayers consist of the following components: (1) a high pressure pump powered either by an electric motor or an air cooled internal combustion engine; (2) inlet connection to connect cold water supply to the sprayer; (3) where applicable, an electric cable to connect the electric motor to the power supply; (4) a high pressure hose and spray wand with flat jet nozzle; and (5) a boiler system for hot water models. All components are in a common housing mounted on a wheeled frame.

On protest, you maintained that high pressure cleaning to remove manure from barns and stalls for sanitary purposes, and for cleaning agricultural machinery is a legitimate agricultural use, and that these units are principally marketed to the agricultural industry for these purposes. However, Customs liquidated the entry under protest under provision for other mechanical appliances for spraying liquids or powders, in subheading 8424.89.00, HTSUS, on the basis that the washing of barns and stalls and agricultural machinery had not been shown to be a legitimate agricultural use.

The HTSUS provisions under consideration are as follows:

8424	Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines:
8426.30.81 (now 90)	Other steam or sand blasting machines and similar jet projecting machines
8424.81	Other agricultural or horticultural appliances:
8424.81.10	Sprayers (except sprayers, self-contained, having a capacity not over 20 liters)
8424.89	Other:
8424.89.00 (now 70)	Other

Issue:

Whether the sprayer/cleaner models are jet projecting machines similar to steam or sand blasting machines.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes,

and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In addition to removing manure from barns and stalls, high pressure cleaning machines and appliances are used to clean house exteriors, cars, decks, boats, lawn equipment, sidewalks, gutters, patio furniture, among other things. They may be either commercial or domestic, mounted on a wheeled chassis or floor standing, and consist basically of either electric or gasoline-powered, motor driven pumps or pistons which force water through a hose to a wand, nozzle or other aperture to attain a high pressure spray to clean the surface of the target article. At lower pressures, some models may have a suction hose that draws detergent or other cleaning solvent from a reservoir into the system to enhance the washer's cleaning capability.

We continue to be of the opinion that classification under subheading 8424.81.10 is undocumented because of insufficient evidence that the sprayers are principally used in agricultural or horticultural pursuits. In our opinion, the relevant issue is whether power washers are jet projecting machines "similar" to steam or sand blasting machines. To resolve this issue requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. This is the statutory rule of construction *ejusdem generis*. To be classifiable in subheading 8424.30.90, HTSUS, the high pressure cleaners the subject of HQ 952868 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, *etc.*, by subjecting the articles to the action of high pressure jets of sand, metal abrasives, *etc.* They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, *etc.*

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and pressure cleaners or washers all have the same essential components, *i.e.*, motor, pump or piston and spraying nozzle or wand; steam blast appliances and pressure washers commonly incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle, wand or other narrow opening. We conclude that in terms of design, construction, function and use, the high pressure sprayer/ cleaners in HQ 952868 are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Cus-

toms is not bound by them. Nevertheless, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar in design and function to the high pressure sprayer/cleaners at issue here in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the high pressure sprayer/cleaner models the subject of HQ 952868 are provided for in heading 8424. They are classifiable in subheading 8424.30.90, HTSUS. HQ 952868, dated November 23, 1993, is modified as to this classification. However, these models remain eligible for classification under subheading 9817.00.50, HTSUS, upon compliance with applicable law and Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

CLA-2 RR:CR:GC 964664 JAS
Category: Classification
Tariff No. 8424.30.90

MR. SILVIO FAVRIN
J.C. HALLMAN MANUFACTURING CO., LTD
141 Weber Street S.
Waterloo, Ontario
Canada N2J 2A9

Re: NY 837810 Modified; High Pressure Washer.

DEAR MR. FAVRIN:

In NY 837810, which the Area Director of Customs (now Director of Customs National Commodity Specialist Division), New York, issued to you on March 17, 1989, high pressure washers from Canada were held to be classified in subheading 8424.89.00 (now 70), Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders.

NY 837810 also held that the high pressure washers qualified for a reduced rate of duty as an originating good under the United States-Canada Free trade Agreement (FTA) and for duty-free entry under subheading 9817.00.50, HTSUS, as machinery, equipment and implements to be used for agricultural or horticultural purposes, if actually used in agricultural pursuits, and upon compliance with sections 10.131-10.139 of the Customs regulations. We have reconsidered the subheading 8424.89.00 classification and now believe that it is incorrect.

Facts:

The merchandise in NY 837810 is the Hallman High Pressure Washer. It was described as an electric motor-driven ceramic piston pump designed to increase pressure on water from a faucet to as much as 1,000 lbs. per square inch. It is housed in a heavy metal casing with a plastic cover and mounted on a wheeled chassis with a handle. The water is delivered through a high-pressure hose to a

gun assembly to be sprayed through a nozzle onto the target article. Germicides and detergents may in some cases be mixed with the water to enhance the device's cleaning capability. The High Pressure Washer may be used to clean farm machinery as well as house exteriors, cars, decks, boats, lawn equipment, sidewalks, gutters, patio furniture, among other things.

The HTSUS provisions under consideration are as follows:

- 8427** Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines:
- 8427.30.80** (now **90**) Other steam or sand blasting machines and similar jet projecting machines
- 8424.92** Other:
- 8424.89.00** (now **70**) Other

Issue:

Whether Hallman High Pressure Washer is a jet projecting machine similar to steam or sand blasting machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, the provision in subheading 8424.30.90, if it applies, is more specific than subheading 8424.89.00 (now 70), which is a "basket" provision. In our opinion, whether power washers are jet projecting machines "similar" to steam or sand blasting machines, requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the pressure washers the subject of NY 837810 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, etc., by subjecting the articles to the action of high pressure jets of sand, metal abrasives, etc. They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, etc.

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and pressure or power washers all have the same essential components, i.e., motor, pump or piston and spraying wand or nozzle; steam blast appli-

ances and power washers commonly incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle or other narrow opening. We conclude that in terms of design, construction, function and use, the pressure washers at issue are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, however, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar to the ones at issue here in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the Hallman Pressure Washer, as described, is provided for in heading 8424. It is classifiable in subheading 8424.30.90, HTSUS.

NY 837810, dated March 17, 1989, is modified accordingly. However, the pressure washer remains eligible for the reduced rate of duty under the FTA, and for free entry under subheading 9817.00.50, HTSUS, both upon compliance with applicable law and Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

CLA-2 RR:CR:GC 964665 JAS
Category: Classification
Tariff No. 8424.30.90

MS. SUSAN E. CARR
C. J. TOWER INC.
128 Dearborn Street
Buffalo, NY 14207-3198

Re: NY 843315 Modified; Pressure Washer.

DEAR MS. CARR:

In NY 843315, dated July 13, 1989, which the Area Director of Customs (now the Director of Customs National Commodity Specialist Division), New York, issued to you on behalf of Bill's Stabbing & Mfg. Ltd., pressure washers, products of Canada, among other articles, were held to be classified in subheading 8424.89.00 (now 70), Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders.

NY 843315 also held that the pressure washers originating in the territory of

Canada were eligible for a reduced rate of duty under the United States-Canada Free Trade Agreement, and also for duty-free entry under subheading 9817.00.50, HTSUS, as machinery, equipment and implements to be used for agricultural or horticultural purposes, if actually used in agricultural pursuits, and upon compliance with sections 10.131-10.139 of the Customs regulations. We have reconsidered the subheading 8424.89.00 classification and now believe that it is incorrect.

Facts:

The merchandise in NY 843315, in part, was described as pressure washers used with spray guns in the cleaning of housing facilities for animals, particularly hog and dairy. They may be either electric or gasoline-operated, portable or stationary, and vary in operating pressure. Submitted literature depicts articles that essentially utilize low-pressure tap water run through a hose to a high-pressure pump to a spray wand and revolving nozzle. They may be used on building exteriors, decks, cars, boats, sidewalks, gutters and patio furniture for washing, sterilizing, disinfecting and cleaning operations. In this case, they are said to enable a farmer to spray-clean hog and dairy facilities and farm machinery.

The HTSUS provisions under consideration are as follows:

8428	Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines:
8428.30.80 (now 90)	Other steam or sand blasting machines and similar jet projecting machines
8424.93	Other:
8424.89.00 (now 70)	Other

Issue:

Whether the pressure washers are jet projecting machines similar to steam or sand blasting machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, the provision in subheading 8424.30.90, if it applies, will prevail over subheading 8424.89.70, which is a "basket" provision. In our opinion, whether the pressure washer at issue is a jet projecting machine "similar" to steam or sand blasting machines, requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the pressure washers the subject of NY 843315 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy

construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, *etc.*, by subjecting the articles to the action of high pressure jets of sand, metal abrasives, *etc.* They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, *etc.*

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and pressure or power washers all have the same or similar essential components, *i.e.*, motor, pump or piston, and spraying wand or nozzle of some type; steam blast appliances and pressure washers sometimes incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle or narrow opening. We conclude that in terms of design, construction, function and use, the pressure washers at issue in NY 843315 are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar to the Wet Jet Pressure Washer in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the pressure washers, as described, are provided for in heading 8424. They are classifiable in subheading 8424.30.90, HTSUS. NY 843315, dated July 13, 1989, is modified as to this classification. However, the pressure washers remain eligible for the reduced rate of duty under the FTA, and also for classification under subheading 9817.00.50, HTSUS, both upon compliance with applicable law and Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT O]

CLA-2 RR:CR:GC 964666 JAS

Category: Classification

Tariff No. 8424.30.90

Ms. TRACY ELLMAN
PBB GROUP
434 Delaware Ave.
Buffalo, NY 14202

Re: NY 896995 Revoked; Power Spray Washer.

DEAR Ms. ELLMAN:

In NY 896995, dated April 25, 1994, which the Area Director (now Director of Customs National Commodity Specialist Division) New York, issued to you on behalf of Proceco Industrial Machinery Ltd., the Typhoon-HD heavy duty power spray washer was held to be classifiable in subheading 8424.89.00 (now 70), Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The merchandise in NY 896995, the Typhoon-HD heavy duty spray washer, combines chemical, heat and the mechanical scrubbing action of its spray jets for fast cleaning action. The spray washer is a large industrial machine that comes in various models. It may be either electric, gas or steam heated, and features a tank and cabinet of steel plate construction, polyurethane insulation, and a steel outer shell. The spray washer incorporates a turntable with a capacity of from 1,000 to 20,000 lbs. This permits the target material to rotate while it is cleaned or washed from all sides. Among other things, the spray washer has a fresh water inlet and solenoid valve for rinsing and rapid filling of the tank, thermostat for automatic temperature control of the water, automatic solution lever control for mixing detergents and other solvents, and pneumatic control for oscillating the central nozzle pipe. The Typhoon-HD spray washer is advertised for heavy-duty degreasing, glue pot cleaning and rinsing, inkpot cleaning, paint stripping, rust proofing and phosphating prior to rinsing, among other industrial uses.

In your ruling request of April 14, 1994, you noted that previous importations of the Typhoon-HD spray washer have been made through the Customs ports at Blaine, WA and Champlain, NY. You state that classification under subheading 8424.30.90, HTSUS, steam or sand blasting machines and similar jet projecting machines may have been considered.

The HTSUS provisions under consideration are as follows:

- | | |
|----------------------------|---|
| 8424 | Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting machines and similar jet projecting machines: |
| 8428.30.81 (now 90) | Other steam or sand blasting machines and similar jet projecting machines |
| 8424.90 | Other: |
| 8424.89.00 (now 70) | Other |

Issue:

Whether the Typhoon-HD heavy-duty spray washer is a jet projecting machine similar to steam or sand blasting machines.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Customs believes that the power spray washer at issue may belong to a class or kind of high pressure cleaning machines and appliances used to clean house exteriors, cars, decks, boats, lawn equipment, sidewalks, gutters, patio furniture, in addition to the uses attributed to the Typhoon-HD.

The subheading 8424.30.90 classification, if it applies, would prevail over subheading 8424.89.00 (now 70), which is a "basket" provision. In our opinion, whether the Typhoon-HD power spray washer is a jet projecting machines "similar" to steam or sand blasting machines requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the power washer at issue shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the power sprayer washer the subject of NY 896995 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, *etc.*, by subjecting the articles to the action of high pressure jets of sand, metal abrasives, *etc.* They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, *etc.*

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and power or pressure cleaners or washers all have the same essential components, *i.e.*, motor, pump or piston and spraying nozzle or wand; steam blast appliances and pressure washers and cleaners commonly incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle, wand or other narrow opening. We conclude that in terms of design, construction, function and use, the Typhoon-HD power spray washers in NY 896995 are jet projecting machines similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to

be substantially similar in design and function to the power spray washers at issue here in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the Typhoon-HD power spray washer is provided for in heading 8424. It is classifiable in subheading 8424.30.90, HTSUS. NY 896995, dated April 25, 1994, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT P]

CLA-2 RR:CR:GC 964667 JAS
Category: Classification
Tariff No. 8424.30.90

MR. DAVID A. WALSER
ARTHUR J. HUMPHREYS DIV.
BORDER BROKERAGE CO., INC.
P.O. Box 249
Sumas, WA 98295

Re: NY E83107 Modified; Pressure Washer.

DEAR MR. WALSER:

In NY E83107, dated June 17, 1999, which the Director of Customs National Commodity Specialist Division, New York, issued to you on behalf of BE Pressure Supply Inc., the PE-4013 Pressure Washer from Canada was held to be classified in subheading 8424.89.70, Harmonized Tariff Schedule of the United States (HTSUS), as other mechanical appliances for projecting, dispersing or spraying liquids or powders.

NY E83107 also held that the pressure washer, assembled in Canada with both originating and non-originating components was eligible for the tariff preference as an originating good under the North American Free Trade Agreement (NAFTA). We have reconsidered the subheading 8424.89.70 classification and now believe that it is incorrect.

Facts:

The merchandise in NY E83107 was described as a 4000 PSI - 4 GPM pump powered by a 13 HP gasoline engine, all on a wheeled chassis with chrome frame. It has a thermal relief valve, a 50-foot pressure hose with couplers, a chemical injector kit, a 5000 PSI pressure gauge, a 4000 PSI gun with 36-inch insulated wand and 4 nozzles. The PE-4013 Pressure Washer is designed to force water through a hose and nozzle to attain a high power projection to clean a variety of surfaces, such as house exteriors, cars, decks, sidewalks, gutters, heavy equipment and the like.

The HTSUS provisions under consideration are as follows:

8429	Mechanical appliances...for projecting, dispersing or spraying liquids or powders; steam or sand blasting
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machines and similar jet projecting machines:

8429.30.80 (now **90**) Other steam or sand blasting machines
and similar jet projecting machines

8424.94 Other:

8424.89.70 Other

Issue:

Whether the PE-4013 Pressure Washer is a jet projecting machine similar to steam or sand blasting machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading 8424.30.90 classification, if it applies, will prevail over subheading 8424.89.70, which is a "basket" provision. In our opinion, whether the PE-4013 Pressure Washer is a jet projecting machine "similar" to steam or sand blasting machines requires that we identify the characteristic or characteristics that steam or sand blasting machines have in common, and whether the PE-4013 shares that/those characteristics. To be classifiable in subheading 8424.30.90, HTSUS, the pressure washer the subject of NY E83107 must be substantially the same as steam or sand blasting machines in terms of design, construction, function, and use.

The ENs on p. 1287, under the heading (C) **STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES**, include the following:

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles, for etching or putting a matt surface on glass, stone, *etc.*, by subjecting the articles to the action of high pressure jets of sand, metal abrasives, *etc.* They are usually fitted with dust extractors to remove the residual sand and dust. The heading also covers steam blast appliances used, for example, for de-greasing machined metal, *etc.*

From the EN description, it is apparent that sand blasting machines, steam blast appliances, and pressure or power washers all have the same essential components, *i.e.*, motor, pump and spraying wand or nozzle; steam blast appliances and power washers commonly incorporate a heater coil which gives them the ability to create steam; whether using steam or sand, pressurized water or heated pressurized water, alone or in combination with a cleaning solvent, all are of a class or kind of machines and appliances used for *cleaning* purposes to remove foreign matter from a target surface; and (3) all *project* their cleaning media, that is, they discharge or emit a forceful stream of effluent from a nozzle or narrow opening. We conclude that in terms of design, construction, function and use, the PE-4013 Pressure Washer is a jet projecting machine similar to steam or sand blasting machines.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, Customs regards rulings from other coun-

tries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and Customs is not bound by them. Nevertheless, however, a ruling from the Munich Branch of the German Customs Directory, and another from Revenue Canada have recently been brought to our attention. These rulings classify power washers believed to be substantially similar to the ones at issue here in subheading 8424.30.80 (now 90). These rulings are consistent with our classification under the HTSUS.

Holding:

Under the authority of GRI 1, the PE-4013 Pressure Washer is provided for in heading 8424. It is classifiable in subheading 8424.30.90, HTSUS. NY E83107, dated June 17, 1999, is modified as to this classification. However, in accordance with NY E83107, the pressure washer remains eligible for any available duty preference under the NAFTA, upon compliance with applicable law and Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF AUTOMATIC ALARM SYSTEM FOR MOTOR VEHICLES

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of automatic alarm system for motor vehicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling and revoke another ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of automatic alarm systems for motor vehicles, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These are small warning devices for motor vehicles which, when activated, emit an audio alarm signal. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before December 29, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling and revoke another ruling relating to the tariff classification of automatic alarm systems for motor vehicles. Although in this notice Customs is specifically referring to two rulings, HQ 951797 and HQ 955115, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other rea-

sons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 951797, dated August 17, 1992, incomplete or unfinished burglar alarm systems for motor vehicles were held to be classifiable in subheading 8531.10.00, HTSUS, as burglar or fire alarms and similar apparatus. This ruling was based on Customs belief that the device's description conformed to the 8531 heading description. HQ 951797 is set forth as "Attachment A" to this document. In HQ 955115, dated December 20, 1993, a battery-operated alarm device for motor vehicles, among similar devices for non-automotive uses, was classified in the same provision. HQ 955115 is set forth as "Attachment B" to this document.

It is now Customs position that these alarm devices for motor vehicles are classifiable in subheading 8512.30.00, HTSUS, as sound signaling equipment of a kind used for cycles or motor vehicles. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke HQ 951797 and to modify HQ 955115, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 964660, and in HQ 964661, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 14, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

August 17, 1992
 CLA-2 CO:R:C:M 951797 MBR
 Category: Classification
 Tariff No. 8531.10.00

JOE A. DAHM
 THERM TECHNOLOGY CORPORATION
 2879 Remico
 Grandville, Michigan 49418

Re: Automotive Burglar Alarm Systems; Incomplete; Essential Character.

DEAR MR. DAHM:

This is in response to your letter of March 25, 1992, on behalf of the Therm Technology Corporation, regarding the classification of an incomplete automotive burglar alarm system, imported from Hong Kong, under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The instant merchandise consists of an incomplete automotive burglar alarm. The importation consists of a printed circuit board with microcomputer chips, diodes, capacitors, relays, transistors, and amplifiers. After importation the following will be added: wiring, a switch, terminals, an instruction sheet, and packaging. The system operates by sensing a change in the electrical current usage from the battery, which would be caused by opening a door and triggering the dome light, starting the car, or turning on the radio.

Issue:

What is the classification of an incomplete automotive burglar alarm consisting of a printed circuit board containing all of the necessary electronics, under the Harmonized Tariff Schedule of the United States (HTSUS)?

Law and Analysis:

The General Rules of Interpretation (GRIs) to the HTSUSA govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

...classification shall be determined according to the terms of the headings and any relative section or chapter notes...

The alarm system component is *prima facie* classifiable under the following headings/subheadings:

8531 Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:

* * * * *

8531.10.00 Burglar or fire alarms and similar apparatus.

* * * * *

8531.90.00 Parts

* * * * *

8537 Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, other than switching apparatus of heading 8517:

* * * * *

8537.10.00 For a voltage not exceeding 1,000 v

* * * * *

In HQ 088595 (September 12, 1991), HQ 087876 (December 27 1991), HQ 086460 (July 18, 1990), and HQ 071612 (July 25, 1985), Customs addressed the classification of the central components of a burglar alarm system. In those decisions we stated:

In HQ Ruling 071612 (July 25, 1985), the central components of a burglar alarm system were entered without the remote sensors, bells and sirens. Various indicator light panels were incorporated in the front of each component. The merchandise was found to be "more than" control panels and was classified as burglar alarms and parts thereof in item 685.70. HQ Ruling 071612 found that the articles were more than control panels because they incorporated a substantial proportion of the operating part of the machine controlled, and in fact were the very essence of the burglar alarm systems.

Like the burglar alarm components in HQ Ruling 071612, the fire alarm components under consideration (in HQ 086460 dated July 18, 1990) incorporate a substantial proportion of the operating part of the machine controlled. The articles incorporate the power supply for the remote sensors and alarms controlled. The central cabinets of all three models incorporate indicator light panels. The Basic Integrated System includes an amplifier which provides a speaker source for various alarm messages. The Basic Multiplex System incorporates a Serial Link Controller which interfaces the system's CPU and emergency Satellite communicator (ESAC).

Therefore, we held that the "Edwards 8500" series fire alarm systems, when entered without the remote sensors and sound signalling apparatus, were classified as "[b]ells, sirens, indicator panels, burglar and fire alarms...and parts thereof" in item 685.70, TSUS.

Furthermore, in HQ 088464, dated September 11, 1991, we addressed the scope of heading 8537. Heading 8537, HTSUSA, provides for "[b]oards, panels . . . consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . ." In HQ 088595, and HQ 088464, we held that these systems did not satisfy this description. We stated:

It is not used merely for the electric control or the distribution of electricity. As discussed above, the system is used to perform multiple tasks described in heading 8471, HTSUSA (and 8531, HTSUSA). Accordingly, the subject system does not satisfy the terms of this heading and is not properly classifiable therein.

In the instant case, the imported component is electronically complete and contains microcomputer chips which are the heart of the system since they detect the minute variations in electrical current and trigger the alarm.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to heading 8537, HTSUS, page 1391, describe: "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing,

counting and arithmetic, to control, through digital or analog input/output modules, various types of machines."

However, as in HQ 088464, the instant merchandise is not merely a programmable controller. Furthermore, the automotive burglar alarm component is not "programmable through digital or analog input/output modules."

The instant automotive alarm system component is not complete at importation. Therefore, reference must be made to GRI 2(a), which states:

2. (a) Any reference in a heading to an article shall betaken to include a reference to that articleincomplete or unfinished, provided that, asentered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include areference to that article complete or finished (orfalling to be classified as complete or finishedby virtue of this rule), entered unassembled ordisassembled.

The ENs to Section XVI, chapter 85 (which include heading 8537, HTSUS), further delineate the following, page 1132:

(IV) Incomplete Machines

Throughout the section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (*i.e.*, an assembly of parts so far advanced that it already has the main essential features of the complete machine). Thus a machine lacking only a flywheel, a bed plate, calendar rolls, tool holders, *etc.*, is classified in the same heading as the machine, and not in any separate heading providing for parts. Similarly a machine or apparatus normally incorporating an electric motor (*e.g.*, electro-mechanical hand tools of heading 85.08) is classified in the same heading as the corresponding complete machine even if presented without that motor.

Therefore, it is Customs position that the instant automotive burglar alarm system component has the main essential features of the complete machine, and consequently, meets the terms of subheading 8531.10.00, HTSUS, which provides for: "[b]urglar or fire alarms and similar apparatus."

Holding:

The instant automotive burglar alarm system component meets the terms of subheading 8531.10.00, HTSUS, which provides for: "[e]lectric sound or visual signaling apparatus...: [b]urglar or fire alarms and similar apparatus." The rate of duty is 2.7% *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

December 20, 1993
CLA-2 CO:R:C:M 955115 DFC
Category: Classification
Tariff No. 8531.10.00

PAUL GARCEAU
A.N. DERINGER, INC.
RD #1 Cox W432
Alexandria Bay, NY 13607

Re: Alarms, Composite goods; Essential character; HRL's 951797, 951929.

DEAR MR. GARCEAU:

This is in reference to your letter dated September 20, 1993, to the Area Director of Customs in New York, concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of two alarm devices. Your letter together with the descriptive literature was referred to this office for a response.

Facts:

The merchandise involved consists of the "Companion Portable Alarm PA-1" (PA-1) produced in Korea and the "Keep Watch Vehicle Alarm VA-1" (VA-1) produced in Hong Kong.

The PA-1 consists of a rectangular shaped plastic body housing an electronic circuitry which enables it to function as a hand-held flashlight, siren, flashing beacon and portable burglar alarm.

The VA-1 consists of a plastic rectangular shaped plastic body housing an electronic circuitry containing an alarm and an infrared receiver operating on a fixed infrared frequency, and a portable remote control key chain module which operates on a matching infrared frequency. The remote control infrared transmitter enables the user to arm and disarm the alkaline battery operated alarm that is left in the vehicle, and in addition activates the alarm if the user is encountering a dangerous situation.

Issue:

How are the alarms classified?

What component imparts the essential character to the PA-1?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and, provided such headings or notes do not otherwise require, according to [the remaining GRI's taken in order]."

Inasmuch as the PA-1 is a composite good [flashlight plus siren, flashing beacon and portable burglar alarm] its classification is governed by GRI 3(b), HTSUS, which reads, as follows:

3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
 - (b) Mixtures, composite goods consisting of different materials or made up of different components . . . which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The PA-1 is *prima facie* classifiable under subheading 8513.10.20, HTSUS, which provides for flashlights, or under subheading 8531.10.00, HTSUS, which provides for burglar or fire alarms and similar apparatus, or under subheading 8531.80.00, HTSUS, which provides for electric sound or visual signaling apparatus (for example, bells, siren, indicator panels, burglar or fire alarms), other apparatus.

The Harmonized Commodity Description and Coding System Explanatory Notes to the HTSUS (EN), although not dispositive, should be looked to for the proper interpretation of the HTSUS. See 54 FR 35128 (August 23, 1989).

Composite goods are classifiable as if they consisted of the component which gives them their essential character. EN VIII to GRI 3(b), at page 4, reads as follows:

- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the materials or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The PA-1 is advertised for use as follows:

When walking, jogging, biking, or hiking through the park, dark street or any place you feel afraid or uncomfortable, simply carry your Companion in your hand, preferably with the 'grip cord' looped around your wrist for quick and easy use—or attach it to your belt, purse or other clothing. Use the flashlight to help you see your surroundings more clearly.

Should a situation occur, quickly pull the 'grip-cord' away from the Companion to cause a loud shrieking alarm to sound and the light to flash. This ear-piercing siren sounds at a level of up to 130 decibels (where permitted by law). In the event of an attack, the distress signal should frighten the assailant and alert others nearby that you are in danger.

For extra protection at home or away, the Companion PA-1 can also be used as a door alarm. The sensitive door clip attachment (included) will alert you, the intruder and possibly others that your protected door is being entered.

It is our observation that the essential character of the PA-1 is derived from its function as an alarm. Although the device may be used as a flashlight, its utility as an alarm is the reason for carrying the device. Otherwise, if only illumination were needed, one need only carry a flashlight. Further, the function of the "flashing beacon" is a secondary feature which merely adds to the effectiveness of the alarm.

In view of the foregoing, it is our opinion that the PA-1 is classifiable under subheading 8531.10.00, HTSUS, which provides for burglar or fire alarms and similar apparatus. See Headquarters Ruling Letter (HRL) 951929 dated June 15, 1992. Pursuant to GRI 1, HTSUS, VA-1 is classifiable under subheading 8531.10.00, HTSUS, which provides for electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), burglar or fire alarms and similar apparatus. See HRL 951797 dated August 17, 1992.

Holding:

The essential character of the PA-1 is imparted by its function as an alarm.

The PA-1 is classifiable under subheading 8531.10.00, HTSUS, with duty at the rate of 2.7% *ad valorem*.

The VA-1 is classifiable under subheading 8531.10.00, HTSUS, with duty at the rate of 2.7% *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

CLA-2 RR:CR:GC 964660 JAS
 Category: Classification
 Tariff No. 8512.30.00

MR. JOE A. DAHM
 THERM TECHNOLOGY CORP.
 2879 Remico
 Grandville, Michigan 49418

Re: HQ 951797 Revoked; Automotive Burglar Alarm System.

DEAR MR. DAHM:

In HQ 951797, dated August 17, 1992, a current sensing car alarm, imported incomplete or unfinished, was held to be classifiable in subheading 8531.10.00, Harmonized Tariff Schedule of the United States (HTSUS), as burglar or fire alarms and similar apparatus. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The merchandise in HQ 951797 is an incomplete automotive burglar alarm, model number CP-028A. It is compact in size, measuring 130 mm x 85 mm x 35 mm, and consists of a printed circuit board with microcomputer chips, diodes, capacitors, relays, transistors and amplifiers. The alarm will be completed after importation by the addition of wiring, a switch, terminals, together with an instruction sheet and packaging. The device incorporates a piezo buzzer and emits a "powerful piercing alarm" of 120 decibels when its current sensing circuitry detects even the slightest change in current from the car's battery caused, for example, by opening a door, starting the engine, turning on the radio or activating the lights. The alarm sounds for 90 seconds, then resets itself. Once activated, the device has a 30-second delay within which the driver may exit the car and lock it. The device also has an 8-second delay for the driver to open the door and switch off the master toggle switch hidden inside.

The HTSUS provisions under consideration are as follows:

8512	Electrical lighting or signaling equipment..., of a kind used for cycles or motor vehicles:
8512.30.00	Sound signaling equipment
*	* * * *
8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.10.00	Burglar or fire alarms and similar apparatus

Issue:

Whether the automotive burglar alarm is a good of heading 8512.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

By its terms, heading 8531 excludes electric sound signaling apparatus of heading 8512. The ENs on p. 1496 state that heading 8531 covers all electrical apparatus for signaling purposes, with the exception of signaling apparatus used on cycles or motor vehicles (heading 85.12) and such apparatus for traffic control on roads, railways, etc. (heading 85.30). This decision does not revisit the issue of whether the incomplete burglar alarm model CP-028A has the essential character under GRI 2(a), HTSUS, of a complete or finished burglar alarm; rather, the issue here is whether the device is electrical sound signaling apparatus or equipment principally used for motor vehicles.

The ENs on p. 1461 list horns, sirens and other electrical sound signaling appliances as within the scope of heading 8512. It is reasonable and logical to conclude that the powerful piercing alarm created by the piezo buzzer qualifies the device at issue as an electrical sound signaling appliance substantially similar to horns and sirens. The qualifying language in heading 8512 "of a kind used for cycles or motor vehicles" is a provision governed by "principal use." See *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 226, 839 F. Supp. 866 (1993). In accordance with Additional U.S. Rule of Interpretation 1(a), HTSUS, the controlling use is the principal use at or immediately prior to the date of importation of the goods of that class or kind to which the import belongs. Literature submitted with the ruling request that became HQ 951797 contains a narrative description of the CP-028A car alarm, together with a schematic. The device is connected by cable to the car's battery through the fuse box, with another cable running from the alarm to the toggle switch. The CP-028A includes a hood/trunk alarm trigger device (instant alarm), and includes as accessories a master toggle switch, push-release switch, color coded wires and assembling hardware. The available information indicates to us that the CP-028A belongs to a class or kind of sound signaling equipment principally used for motor vehicles.

Holding:

Under the authority of GRI 1, the CP-028A current sensing car alarm is provided for in heading 8512. It is classifiable in subheading 8512.30.00, HTSUS. HQ 951797, dated August 17, 1992, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

CLA-2 RR:CR:GC 964661 JAS
Category: Classification
Tariff No. 8512.30.00

MR. PAUL GARCEAU
A.N. DERINGER, INC.
RD #1 Box W432
Alexandria Bay, NY 13607

Re: HQ 955115 Modified; Motor Vehicle Alarm.

DEAR MR. GARCEAU:

In HQ 955115, dated December 20, 1993, issued to you on behalf of Via Security Network, Inc., the KeepWatch Vehicle Alarm VA-1, was held to be classifiable in subheading 8531.10.00, Harmonized Tariff Schedule of the United States (HTSUS), as burglar or fire alarms and similar apparatus. A similar device, the Companion Portable Alarm PA-1, incorporating a hand-held flashlight, siren, flashing beacon and portable burglar alarm, all in a plastic body, was similarly classified. We have reconsidered the classification of the KeepWatch Vehicle Alarm VA-1 and now believe that it is incorrect.

Facts:

The merchandise in HQ 955115 is described in submitted literature as a portable alarm which readily attaches to the driver's side window of any motor vehicle. The device is powered by six "AA" alkaline batteries. The literature states that for more permanent installation, the VA-1 may be wired directly to the vehicle's fuse box using wiring that is included. A key-chain remote transmitter included with the VA-1 emits an audible chirp and flashing red LED to indicate the device is armed. Once the VA-1's sensitivity level is set, attempts to break the glass, pry open doors, hood or trunk, or move the vehicle will cause a loud alarm to sound. The VA-1 also incorporates a "voltage drop" detector that permits the VA-1 to sound the alarm when it detects that a light has been activated by opening a door, hood or trunk.

The HTSUS provisions under consideration are as follows:

8512	Electrical lighting or signaling equipment..., of a kind used for cycles or motor vehicles:
8512.30.00	Sound signaling equipment
*	* * * *
8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.10.00	Burglar or fire alarms and similar apparatus

Issue:

Whether the KeepWatch Vehicle Alarm VA-1 is a good of heading 8512.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

By its terms, heading 8531 excludes electric sound signaling apparatus of heading 8512. The ENs on p. 1496 state that heading 8531 covers all electrical apparatus for signaling purposes, with the exception of signaling apparatus used on cycles or motor vehicles (heading 85.12) and such apparatus for traffic control on roads, railways, etc. (heading 85.30). The issue here is whether the KeepWatch Vehicle Alarm VA-1 is electrical sound signaling apparatus or equipment principally used for motor vehicles.

The ENs on p. 1461 list horns, sirens and other electrical sound signaling appliances as being within the scope of heading 8512. It is reasonable and logical to conclude that the "loud alarm" the VA-1 creates qualifies the device as an electrical sound signaling appliance substantially similar to horns and sirens. The qualifying language in heading 8512 "of a kind used for cycles or motor vehicles" is a provision governed by "principal use." See *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 226, 839 F. Supp. 866 (1993). In accordance with Additional U.S. Rule of Interpretation 1(a), HTSUS, the controlling use is the principal use at or immediately prior to the date of importation of the goods of that class or kind to which the VA-1 belongs. The above description of the KeepWatch Vehicle Alarm VA-1 is taken from literature submitted with the ruling request, and indicates to us that it belongs to a class or kind of sound signaling equipment principally used for motor vehicles.

Holding:

Under the authority of GRI 1, the KeepWatch Vehicle Alarm VA-1, with its key chain remote transmitter, is provided for in heading 8512. It is classifiable in subheading 8512.30.00, HTSUS. HQ 955115, dated December 20, 1993, is modified as to this merchandise.

JOHN DURANT,
Director,
Commercial Rulings Division.

Index

Customs Bulletin and Decisions
Vol. 34, No. 48, November 29, 2000

U.S. Customs Service

Treasury Decisions

	T.D. No	Page
Synopses of Drawback Decisions	00-82	7
Technical Amendments to the Customs Regulations	00-81	1

General Notices

CUSTOMS RULINGS LETTERS AND TREATMENT

Tariff classification:	Page
Proposed Modification:	
Stuffed Sheepskin Cushions and Pillows	10
Proposed Modification and Revocation:	
Automatic Alarm System for Motor Vehicles	49
Power Washers	19



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